

# Construction Industry Coalition on Water Quality

November 19, 2014

Ms. Laurie Walsh, Senior Engineer  
San Diego Regional Water Quality Control Board  
2375 Northside Drive, Suite 100  
San Diego, Ca 92108

Via Email: [Laurie.Walsh@waterboards.ca.gov](mailto:Laurie.Walsh@waterboards.ca.gov)

RE: Comment - Tentative Order No. R9-2015-0001, Place ID: 658018LWalsh

Dear Ms. Walsh:

The Construction Industry Coalition on Water Quality (CICWQ) is submitting comments concerning Tentative Order No. R9-2015-0001 (National Pollutant Discharge Elimination System (NPDES) Permit for Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds within the San Diego Region). We are submitting this letter on behalf of the CICWQ membership, which is described below.

CICWQ is an advocacy, education, and research 501(c)(6) non-profit group of trade associations representing builders and trade contractors, home builders, labor unions, landowners, and project developers. CICWQ membership is comprised of members of four construction and building industry trade associations in southern California: The Associated General Contractors of California, Building Industry Association of Southern California, Engineering Contractors Association, and Southern California Contractors Association, as well as the United Contractors located in San Ramon in northern California. Collectively, members of these associations build a significant portion of the transportation, public and private infrastructure, and commercial and residential land development projects in California.

We present two main points for Regional Board consideration:

- I. The Regional Board is requiring increasingly stringent on-site stormwater retention requirements without evidence the existing, 2010 South Orange County MS4 permit water quality requirements are not working to protect water quality and maintain beneficial uses.

With the release of the Draft Regional Permit to incorporate watersheds in South Orange County within the San Diego Regional Water Quality Control Board (Regional Board) jurisdiction, the Regional Board is proposing to enact the most stringent on-site requirements for stormwater runoff anywhere in California. Despite the demonstrable improvements in water quality runoff noted by the Orange County permittees in their

Report of Waste Discharge, and their presentations to the Regional Board in 2014 during stakeholder and Board workshops, Regional Board staff continue to require additional and less flexible on-site prescriptive performance measures for retaining stormwater runoff.

The program changes proposed in the Draft Regional Permit are being made without presenting any factual evidence that the existing low impact development water quality performance standards are not working, which the County of Orange has required since the requirements became effective in 2012. We believe that because the current South Orange County Permit requirements are working well to protect water quality, presenting any evidence to the contrary is not actually possible. We note no Findings in the Draft Regional Permit that would suggest a need for any changes to program implementation and management.

- II. The Regional Board is eliminating exemptions for hydromodification control, even when stormwater runoff is conveyed in the MS4 system to significantly hardened or engineered channels.

CICWQ and its membership believe that the regulations are tending, at some point, to require hydromodification control for all priority development projects regardless of receiving water susceptibility to hydromodification effects. This regulatory direction is undoubtedly driven by environmental NGO advocacy for removal of all concrete lined channels and receiving waters and complete restoration of all significantly or completely lined channels to “natural” conditions, regardless of the existing land uses and feasibility. This effort ignores the vital role flood control facilities play in urban infrastructure and the protection of life and property, and it ignores the significant public investment in these systems. Loss of hardened channel exemptions will result undoubtedly in increased costs for new and redevelopment of most public and private properties within the Regional Board’s jurisdiction, and require project proponents to engage in a potentially costly and cumbersome bureaucratic process to “mitigate” for the effects (even the lack of) of hydromodification with no environmental benefit.

According to the Regional Board, hydromodification control requirements are being required to maintain geomorphic stability in receiving waters in southern California. However, it is clear that the alignment, grade and cross section of many urban streams has been irrevocably altered. A regulatory requirement to return flows to pre-development conditions will not allow stream restoration to occur. For urban areas, the Permit should support projects that enhance the functions and values of the receiving water within the constraints of the urban environment. Removing exemptions without consideration, or requiring extensive additional study to support exemptions that have been granted for years, appears to be a poor policy decision and one that is not supported technically.

Specifically, nowhere in the Draft Regional Permit is the lack of clear evidence for program changes more evident than the requirements for installing hydromodification controls at priority development sites in Provision E.3.c.(2). In particular, we note the

Regional Board is on a path to remove long-standing exemptions from hydromodification control requirements for certain projects whose discharge is conveyed to receiving waters via significantly or completely hardened and engineered channels. In the Draft Regional MS4 Permit for South Orange County, the Regional Board has provided “interim” exemptions that, while welcome in the interim, should be granted outright and without any additional study or consideration. Nor should additional updates or study be required on the part of the co-permittees to support granting exemptions, as required in the BMP Design Manual update referenced in Provision E.3.c.(2)(e). We would expect that at a minimum, these same conditions are afforded to the Riverside County permittees when their MS4 permit is considered for renewal by the Regional Board in 2015.

And, as we commented on during the adoption process for the San Diego County Regional MS4 permit in 2012 and 2013, new hydromodification control requirements that require a priority project to “avoid critical sediment yield areas” are unnecessarily restrictive, and do not reflect the dynamic and variable nature of the sediment supply that is delivered to stream systems in southern California. Our membership reports several instances where priority development projects are being significantly delayed or stopped all together, because of the inability to comply with the requirement to avoid critical sediment yield areas. The most prevalent reason given is lack of engineering tools and techniques to comply with such a sweeping provision.

In summary, we have commented to the Regional Board about hydromodification control requirements in MS4 permits within its jurisdiction in a number of instances in the recent past, and many of our concerns and comments remain relevant in the current proceedings. While we note many of our suggestions have been ignored or discounted, we incorporate nonetheless those comments by reference here and cite specifically:

- 1) Administrative Draft Regional Municipal Separate Storm Sewer System (Tentative Order No. R9-2012-0011); submitted September 14, 2012. See Item No. 3, page 6.
- 2) Comment Letter– Tentative Order No.R9-2013-0001, Regional MS4 Permit, Place ID: 786088Wchui; submitted January 13, 2013; See Items 3 and 4, pages 4-6.
- 3) San Diego Regional Water Quality Control Board’s Draft MS4 Permit: A case study; submitted May, 2013. See pages 3-8.

These documents are included as attachments to this comment letter.

CICWQ’s membership is in the forefront of water quality regulation, providing to water quality regulators practical ideas and solutions that are implementable and that have as their goal clean water outcomes. If you have any questions or want to discuss the content of our comment letter, please feel free to contact me at (951) 781-7310, ext. 210, (909) 525-0623, cell phone, or [mgrey@biasc.org](mailto:mgrey@biasc.org).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark Grey", is written over a horizontal line. The signature is fluid and cursive.

Mark Grey, Ph.D.

Technical Director

Construction Industry Coalition on Water Quality